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Arizona Corporation Commission

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Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

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**Re: T-03267A-11-0459 - Verizon's Objections to Proposed Tariff Revisions of
McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business
Services, Arizona Access Tariff No. 7 (filed Dec. 20, 2011)**

Dear Sir or Madam:

On November 18, 2011, the Federal Communications Commission ("FCC") issued a Report and Order reforming the universal service and intercarrier compensation systems on a nationwide basis (the "FCC Order").¹ A number of local exchange carriers in Arizona — including Verizon — have filed revisions to their intrastate switched access tariffs to reflect implementation of the FCC's new "VoIP-PSTN" intercarrier compensation regime. McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services ("PAETEC") also filed revisions to its intrastate switched access tariff. However, these tariff revisions do not properly implement the FCC Order in some respects, discussed below, so Verizon asks the Commission to order PAETEC to re-file them to do so.

1. Improper Omission of IP-Terminating Traffic

The FCC Order establishes that, in the absence of an agreement between carriers, the default intercarrier compensation rates for non-local VoIP-PSTN traffic will be equal to interstate access rates.² While PAETEC's tariff correctly defines "VoIP-PSTN Traffic" as traffic it exchanges with the customer "in Time Division Multiplexing format over PSTN facilities, which originates and/or terminates in Internet protocol (IP) format"³ and recognizes that VoIP-PSTN traffic must be compensated at interstate access rates under the FCC Order,⁴ it fails to actually apply the FCC's compensation regime to all VoIP-PSTN traffic. Specifically, it leaves out traffic terminated in IP

¹ *Connect America Fund*, WC Docket No. 01-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking (November 18, 2011), ¶¶ 933-975; 47 C.F.R. § 51.913(a).

² *See, e.g.*, FCC Order at ¶ 933.

³ PAETEC Proposed Tariff, "Section 1-Definitions", First Revised Sheet No. 9 ("Toll VoIP-PSTN Traffic") & § 2.3.4(A).

⁴ PAETEC Proposed Tariff, § 2.3.4(A)(1).

format. It requires the customer to determine originating and terminating percent-VoIP-usage (PVU) factors, but each factor would be based only on traffic that is “*originated . . . in IP format*” (emphasis added) by the customer and by PAETEC.⁵ In other words, the tariff contemplates PVUs for (and, thus, the application of interstate rates to) traffic that a customer *originates* in IP format and terminates to PAETEC, but would deny customers the benefit of the FCC’s VoIP-PSTN compensation regime for traffic that originates in TDM and *terminates* in IP format. Moreover, it makes no sense, and it is inconsistent with the FCC’s expectations,⁶ for PAETEC to require the *customer* to determine PAETEC’s own originating IP usage,⁷ when only PAETEC has that information.⁸

Under the arrangements reflected in its tariffs, PAETEC apparently would charge carriers higher *intrastate* rates for originating access, while PAETEC would enjoy lower *interstate* rates when it buys originating access from Verizon and other carriers that correctly implement the FCC’s regime for *all* VoIP-PSTN traffic. But the FCC explicitly “declin[ed] to adopt an asymmetric approach that would apply VoIP-specific rates for only IP-originated or only IP-terminated traffic,” as some commenters had proposed.⁹ The FCC cited arbitrage concerns relating to asymmetric payments on VoIP traffic, concluding that “[a]n approach that addressed only IP-originated traffic would perpetuate—and expand—such concerns.”¹⁰ Yet PAETEC now asks the Commission to sanction just such an approach by accepting tariffs that apply the FCC’s regime *only* to IP-originated traffic.

The Commission cannot do so. The plain language of the FCC’s VoIP-PSTN compensation rule applies to traffic “exchanged between a local exchange carrier and another telecommunications carrier in [TDM] format that *originates and/or terminates* in IP format.”¹¹ By applying the PVU only to originating IP traffic, the tariff excludes otherwise eligible traffic that terminates in IP format, and that must be billed at interstate rates under the FCC’s new rules.

⁵ US LEC Proposed Tariff No. 3, §§ 3.9(C), (C)(1), and (C)(2); Windstream Proposed Tariff No. 2, §§ 2.3.13(C), (C)(1), (C)(2); XChange Proposed Tariff No. 3, §§ 5.2.4(C), (C)(1), (C)(2).

⁶ See FCC Order, ¶ 963.

⁷ 2.3.4(C)(1)

⁸ PAETEC should determine its own factor for traffic that it originates and terminates on its network in IP format.

⁹ FCC Order, ¶ 942; *see also* ¶ 948.

¹⁰ *Id.*

¹¹ 47 C.F.R. § 51.913(a) (emphasis supplied); *see also* FCC Order ¶ 940.

2. *Unfair Factor-Setting Terms*

Because the FCC Order requires VoIP-PSTN traffic that would otherwise be billed at intrastate switched access rates to be billed at the generally lower interstate rates, carriers have incentives to delay implementation of the new regime in order to preserve existing revenue streams. The PAETEC tariff takes advantage of that opportunity by refusing to put the customer's OPVU/TPVU factors into effect until they have been "verified" by PAETEC, by providing for "verification audits," and by generally making the factors apply prospectively only, and only once all such verification and auditing procedures have been completed.¹² These provisions would delay implementation of the FCC's regime while disputes over the factors are being resolved — whether or not the disputes are meritorious — and thus undermine the FCC's clear intention to put that regime into effect as of January 1, 2012.¹³ Moreover, PAETEC's tariff requires initial factors to be submitted within fifteen days of the tariffs' effective date, or else they will be set at zero (resulting in *all* VoIP-PSTN traffic being billed at intrastate access rates).¹⁴ This unfairly gives access customers insufficient time to implement the new VoIP-PSTN traffic identification process that is required by the FCC's VoIP-PSTN regime. PAETEC should be required to give customers a reasonable time to submit initial factors, and must make those factors applicable retroactively to January 1, 2012 once any disputes are resolved.

3. *Impermissible Cap on Factor Values*

PAETEC's tariff states that "[i]n the absence of an interconnection agreement, at no time will the Telephone Company allow an OPVU or TPVU factor greater than the applicable State percentage as identified in Paragraph 963 of the FCC Order."¹⁵ Paragraph 963 allows LECs to specify, as an alternative means of identifying VoIP-PSTN traffic, "that the default percentage of traffic subject to the VoIP-PSTN framework is equal to the percentage of VoIP subscribers in the state based on the Local Competition Report, as released periodically, *unless rebutted by the other carrier.*" (Emphasis supplied.) PAETEC's proposed tariff would violate the Order by seeking to prohibit customers from rebutting the default statewide percentage of VoIP-PSTN traffic, thereby potentially denying them the full benefit of the FCC's VoIP-PSTN regime.

* * *

The Commission should order PAETEC to refile corrected tariff revisions to ensure that it implements the VoIP-PSTN intercarrier compensation regime as the federal rules require.

¹² See PAETEC Proposed Tariff, § 2.3.4(C)(4).

¹³ FCC Order ¶ 939 n. 1890.

¹⁴ PAETEC Proposed Tariff, § 2.3.4(D). It appears that under these sections customer-specified initial factors would be applied retroactively only if they are submitted within fifteen days *and* are not disputed by PAETEC.

¹⁵ PAETEC Proposed Tariff, § 2.3.4(C)(5).

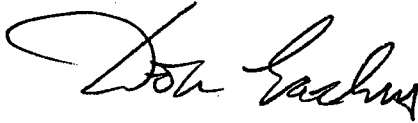
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Should you have any questions, please feel free to call me at 805/480-0702 or via e-mail at don.eachus@verizon.com.

Very truly yours,

VERIZON

A handwritten signature in black ink, appearing to read "Don Eachus". The signature is fluid and cursive, with a large initial "D" and a stylized "E".

Donald Eachus
Director – State Government Affairs

cc: Julie Dishman, Manager, Regulatory & Tariffs, PAETEC